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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,503	11/09/2001	Maureen O'Toole	108467-00051	2612
24587	7590	10/05/2005	EXAMINER	
ALCATEL USA INTELLECTUAL PROPERTY DEPARTMENT 3400 W. PLANO PARKWAY, MS LEGL2 PLANO, TX 75075			KUO, ALEXANDER E	
			ART UNIT	PAPER NUMBER
			2667	

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/040,503	<b>Applicant(s)</b> O'TOOLE, MAUREEN	
	<b>Examiner</b> Alexander Kuo	<b>Art Unit</b> 2667	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 November 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/22/2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. The applicant does not need the first heading of "Background of the Invention" when a heading of "Description of the Related Art" is present. It is recommended that the applicant remove the former and keep the latter. Correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being ambiguous in distinctly defining "said message unit rate" and "said monitored communication linkset." It has been assumed that the "said message unit rate" and "said monitored communication linkset" refer to the first reference of claim 1, and not the identified communication rate and linkset. Clarification is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 6, 8-10, 12-16, and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Kalkunte.

- Consider claim 1, Kalkunte discloses a telecommunication network (IEEE 802.3 network) of interconnected nodes (switches). In conformance with the broad limitation recited by the applicant, a message unit rate is equivalent to a transfer rate, or input/output rate. It is understood to one skilled in the art that the rate at which output messages leave their respective output buffers is directly proportional to the output transfer rate. It is further understood to one skilled in the art that an output buffer size exceeding a threshold (T1) is equivalent to a message unit rate exceeding an overload threshold (a message is added to the output buffer when the transfer rate on the related data path is exceeded, and thus if the output buffer size is exceeded, it is directly related to the transfer rate of the data path being exceeded). Kalkunte thus teaches comparing a message unit rate (output buffer size) on a monitored communication linkset at a network node to a predetermined overload threshold (Figure 3, 48). If the unit rate exceeds the threshold, communication linksets that provide traffic to the output communication linkset are identified and their respective data rates are reported (column 2, lines 54-57). As broadly recited by the applicant, incrementing a count element for each message unit received serves the function of measuring the data rate of each linkset.

- Regarding claim 2, Kalkunte proceeds to compare said message unit rate (output rate, as explained above) with a predetermined underload threshold (T2) and terminates traffic measure collection if said underload threshold exceeds said message unit rate (column 7, paragraph 4).

- Regarding claim 3, Kalkunte has a second control frame including (or providing) a flag (or indicator) causing the transmitting network node to disable (or terminate) rate control operations (which includes traffic measurement collection).
- Regarding claim 4, Kalkunte indicates the commencement of traffic measure collection by the start of rate control operations (control signal from rate control, Figure 3, 50).
- Regarding claim 6, Kalkunte's preferred mode of invention uses a network switch, which is a signal transfer point.
- Regarding claims 8-10, 12-16, and 18-19, the above analysis of Kalkunte reference with respect to claims 1-4 & 6 are also equally applied to these broader method and apparatus claims.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5, 7, 11, 17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalkunte v. Zornig.

- Consider claim 5, Kalkunte includes a method for traffic measurement collection in a telecommunication network of interconnected nodes (see above explanation) but does not provide a method for reporting such information. Zornig discloses a method for load balancing which includes management agent programs

which provide an interface to a device that reports information including system parameters and performance (column 5, line 63). It would have been obvious to one skilled in the art at the time of the invention to include in Kalkunte the teachings of Zornig so that network administrators can view the status of their network.

- Regarding claim 7, Zornig further teaches the monitoring of network load (and thus traffic measurement) for a predetermined maximum period (Column 4, line 1-3).
- Regarding claims 11, 17, and 20, the above analysis of Kalkunte v. Zornig reference with respect to claim 5 is also equally applied to these broader method claims. With specific regard to claims 17 and 20, Kalkunte has a system that has already collected the data rates of the specific linkset a user might direct an examiner to measure. Combined with Zornig's performance indicator, the user can select to view only the information regarding the specific communication linkset.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Van As teaches a method for congestion control where input paths feeding to a congested output path are throttled. Cooper shows a method of network performance management with threshold values. Carr discloses a rate monitoring method with periodic polling of connections.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Kuo whose telephone number is (571) 272-

Art Unit: 2667

5246. The examiner can normally be reached on Monday through Friday, 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on (571) 272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHI PHAM  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2000 10/3/05